IN THE MICHIGAN SUPREME COURT

Appeal from the Michigan Court of Appeals
SAWYER, P.J., and SAAD and RIORDAN, JJ.

In re WILLIAMS, Minors.

MSC No. 155994
COA No. 335932
Trial Ct No. 2012-000291-NA

APPELLANT'S REPLY BRIEF

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The Appellee argues that the Legislature intended to deny Indian parents involved in child protective proceedings of the right to withdraw a voluntary release of their parental rights created by MCL 712B.13(3). See Appellee's Br. at 6-7. To support its argument, the Appellee contends that the language in MCL 712B.13(5), which states that a release executed during the pendency of a child protective case "is subject to" MCL 712B.15, indicates that the Legislature intended for such releases to be wholly governed by MCL 712B.15, and not MCL 712B.13. Thus, according to the Appellee, MCL 712B.13(3) simply does not apply to those parents in the child protective system. But MCL 712B.13 and MCL 712B.15, which must be read together, do not support the Appellee's argument.

When interpreting a statute, this Court's primary goal is to ascertain and give effect to the intent of the Legislature. *Mich Ed Ass'n v Sec'y of State (On Rehearing)*, 489 Mich 194, 217; 801 NW2d 35 (2011). This task begins by examining the language of the statute itself because that language provides the most reliable evidence of the Legislature's intent. *US Fidelity Ins & Guar Co v Mich Catastrophic Claims Ass'n*, 484 Mich 1, 13; 795 NW2d 101 (2009). If the statute's language is clear and unambiguous, then courts must assume that the Legislature intended its plain meaning and must enforce the statute as written. *Robinson v City of Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000). Additionally, when two statutory provisions lend themselves to an

interpretation that avoids conflict, that interpretation must control. *People v Hall*, 499 Mich 446, 454; 884 NW2d 561 (2016).

Here, in MCL 712B.13(3), the Legislature created a process by which Indian parents can withdraw a voluntarily release of their parental rights. Nowhere in that provision – or anywhere else – did the Legislature include any language to indicate its intent to deny Indian parents involved in a child protective proceeding of the protections contained in that provision. Tellingly, MCL 712B.15, which broadly outlines the State's obligations to Indian families in child protective proceedings, specifically mentions that an Indian parent can "provide consent as described in Section 13 of this chapter." MCL 712B.15(1). Read together, these provisions evince the Legislature's desire to include Indian parents involved in child protective proceedings within the scope of MCL 712B.13.

As noted above, the Appellee disagrees, arguing that the language in MCL 712B.13(5) which states that a release executed during the pendency of a child protective case "is subject to" MCL 712B.15 clearly demonstrates the Legislature's intent for such releases to be wholly governed by MCL 712B.15, and not MCL 712B.13. See Appellee's Br. at 6-7. This argument fails for two reasons. First, as noted above, MCL 712B.15(1) specifically mentions that a parent in a child protective case can consent to the termination of his parental rights pursuant to MCL 712B.13. Thus, to deny parents involved in child protective proceedings of the procedural rights contained in MCL

712B.13 would require this Court to ignore the plain language in MCL 712B.15(1). See *People v Hall*, 499 Mich at 454 ("The Court must avoid an interpretation that would render any part of the statute surplusage or nugatory.").

Second, this Court – applying the plain meaning of the phrase "is subject to" has explicitly rejected the statutory construction advanced by the Appellees. In *Mayor of Lansing v PSC*, 470 Mich 154; 680 NW2d 840 (2004), this Court had to construe two statutory provisions – MCL 247.183(1) and MCL 247.183(2) – that outlined the approval process for a pipeline. The Appellant argued that because MCL 247.183(1) stated that the process in the case was "subject to" MCL 247.183(2), it only had to comply with subsection (2) and not subjection (1). *Id.* at 159-160.

The Court rejected the argument. *Id.* at 160. It found that the plain meaning of the phrase "subject to" meant "dependent upon" and thus found that both sections applied in the case. *Id.* That is, to comply with the law, the Appellant had to comply with subsection (1) and (2) of MCL 247.183. *Id.* at 161. In reaching this holding, this Court acknowledged that such an interpretation might lead to "frivolous and potentially crippling resistance" in the approval process. *Id.* at 161. But it clarified that any "dispute over the wisdom of a law . . . cannot give warrant to a court to overrule the people's Legislature." *Id.*

The statutory analysis in this case is no different. As in *Mayor of Lansing*, the Legislature's inclusion of the phrase "subject to" in MCL 712B.13(5) simply indicates its desire for both MCL 712B.13 and MCL 712B.15 to apply when a parent in a child protective case choses to consent to the termination of their parental rights through a voluntarily release. And as in *Mayor of Lansing*, both provisions work together. While MCL 712B.13 outlines the rights of Indian parents to withdraw their release prior to the finalization of an adoption, MCL 712B.15 speaks of the broad obligations of the State to provide services to Indian families and meet higher evidentiary burdens in any State-initiated child protective cases. Neither provision conflicts in any way. In fact, both are entirely consistent with the intent of the Michigan Indian Family Preservation Act to "prevent the voluntary or involuntary out-of-home care placement of Indian children" and to "promote the stability . . . of Indian tribes and families." MCL 712B.5. Adopting the Appellee's construction of this statutory scheme – which would deny Indian parents of an important procedural right – would be inconsistent with this purpose of the Act.

CONCLUSION

The Appellant requests that this Court reverse the decisions of the trial court and the Court of Appeals, both of which violated MCL 712B.13(3) by denying him the right to withdraw his voluntary consent to the termination of his parental rights.

Respectfully submitted,

/s/ Vivek S. Sankaran

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Dated: January 15, 2018

CERTIFICATE OF SERVICE

Vivek Sankaran states that on January 15, 2018 they served the Appellant-Father's Reply Brief on counsel for petitioner, John Hunt, electronically immediately upon filing via the TrueFiling system. They also state that on January 15, 2018, a copy of the document above was sent via US Postal Service first class mail to Appellee-Lawyer-Guardian ad Litem, Mark Torrice, at 42500 Hayes Rd Ste 100, Clinton Township, MI 48038-3641.

/s/ Vivek S. Sankaran

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